Transportation Appeal Tribunal of Canada

2010-2011

Report on Plans and Priorities

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Minister of Transport, Infrastructure and Communities

Table of Contents

CHAIRPERSON'S MESSAGE....5

SECTION I : DEPARTMENTAL OVERVIEW....8
- Raison d'être and responsibilities....9
- Strategic Outcome and Program Activity Architecture (PAA)....9
- PAA Crosswalk....10
  - Strategic Outcome....10
  - Program Activity....10
  - Organizational Information....10
- Planning Summary....12
- Contribution of Priorities to Strategic Outcome....13
- Risk Analysis....14
- Spending Trend....15
- Planned Spending....16
- Voted and Statutory Items....17

SECTION II : ANALYSIS OF PROGRAM ACTIVITIES BY STRATEGIC OUTCOME....18
- Strategic Outcome....19
  - Review and Appeal Hearings....19
- Program Activity by Strategic Outcome....19
- Canada's Economic Action Plan (CEAP)....21
- Lessons Learned....21
- Benefits for Canadians....21

SECTION III : SUPPLEMENTARY INFORMATION....24
- Other Items of Interest....25
- Statutes and Regulations Currently in Force....25
- Statutory Annual Report and Other Departmental Reports....26

❖ Chairperson's Message

It is my pleasure to present the 2010-2011 Report on Plans and Priorities of the Transportation Appeal Tribunal of Canada.

The Tribunal is quasi-judicial and it focuses on the independent review of administrative and enforcement actions taken under the *Transportation Appeal Tribunal Act*, the *Aeronautics Act*, the *Canada Shipping Act*, the *Marine Transportation Security Act,* the *Railway Safety Act*, the *Canada Transportation Act*, the *International Bridges and Tunnels Act* and the *Canada Marine Act*.

Matters that the Tribunal hears include the suspension and cancellation of licences, certificates and other documents of entitlement, the issuance of railway orders and the administration of monetary penalties under various Federal statutes.

The Tribunal conducts its review hearings and appeals throughout Canada in accordance with procedural fairness and the rules of natural justice. The adjudication process has an immediate effect on the aviation, marine and the rail sectors of the country, from coast to coast to coast.

Members are appointed with either transportation specific experience and/or administrative law backgrounds in order to efficiently and effectively address the myriad of issues that the Tribunal encounters. This has allowed the Tribunal to become an expert transportation related quasi-judicial review body and has enhanced the credibility and value of its decision making process.

In 2010, it is anticipated that there will be a significant increase in the number of review hearings and appeals based on the economy, enhanced monitoring of the various modes of federally regulated transportation and the expanded mandate that the Tribunal now has in the marine sector (the *Marine Transportation Security Act* and the Administrative Penalty Regulations under the *Canada Shipping Act*) and ultimately the rail industry. In concert with this, there is an increase in the reviews concerning the refusal to issue or amend aviation documents.

Each new Member receives in depth training concerning the functioning and responsibility of a federal administrative tribunal to ensure consistency in the adjudication process for all transportation modes.

The recruitment and retention of new full time staff and the additional Members required to fulfill the Tribunal's mandate are the two key challenges that are faced in the next few years.

Fortunately, an excellent foundation exists with the present dedicated, professional staff and Members upon which the Tribunal can build on over the next four years.

It is on that basis, that as the new Chairperson and CEO I remain confident of the ability of the Transportation Appeal Tribunal of Canada to continue to be recognized as a leader in its field – nationally and internationally.

J. Richard W. Hall
Chairperson and CEO

Section I: Departmental Overview

❖ Raison d'être and Responsibilities

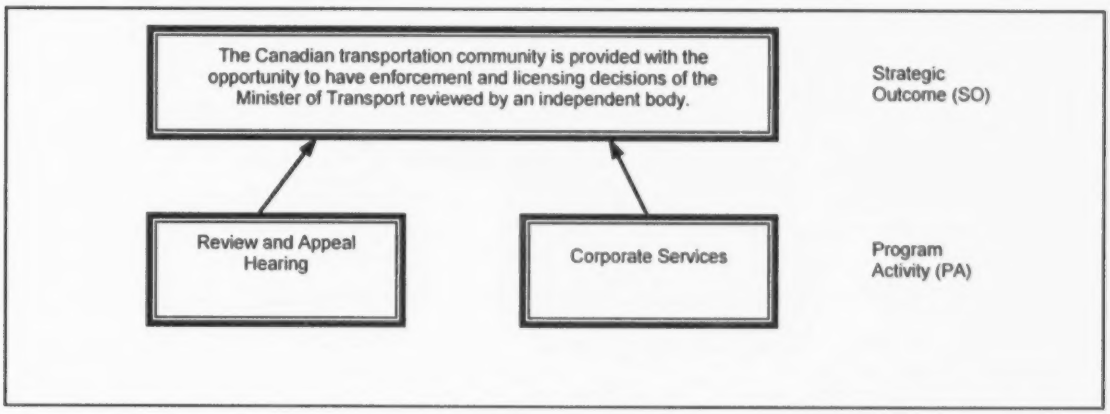
The mandate and the jurisdiction of the Transportation Appeal Tribunal of Canada are provided for by the *Transportation Appeal Tribunal of Canada Act*. The Tribunal's principal mandate as a multimodal review body is to hold review and appeal hearings at the request of interested parties with respect to certain administrative actions taken under various federal transportation Acts.

The objective of the program is to provide the transportation community with the opportunity to have enforcement and licensing decisions of the Minister of Transport reviewed by an independent body. The Minister's enforcement and licensing decisions may include the imposition of monetary penalties or the suspension, cancellation, refusal to renew or refusal to issue or amend documents of entitlement on medical or other grounds. The person or corporation affected is referred to as the document holder.

These decisions are reviewed through a two-level hearing process: review and appeal. All hearings are to be held expeditiously and informally, in accordance with the rules of fairness and natural justice.

At the conclusion of a hearing, the Tribunal may confirm the Minister's decision, substitute its own decision, or refer the matter back to the Minister for reconsideration.

❖ Strategic Outcome and Program Activity Architecture (PAA)


The Canadian transportation community is provided with the opportunity to have enforcement and licensing decisions of the Minister of Transport reviewed by an independent body.
Strategic Outcome (SO)
Review and Appeal Hearing
Corporate Services
Program Activity (PA)

❖ PAA Crosswalk

Strategic Outcome

To provide the Canadian transportation community with the opportunity to have administrative or enforcement actions under federal transportation Acts reviewed by an independent body.

Program Activity

The Tribunal's only activity is the provision of an independent review process for aviation, rail and marine by providing document holders with the opportunity to proceed with a hearing. The Tribunal represents the only forum ensuring that document holders have access to an independent assessment governed by considerations of natural justice. Its role does not overlap with, nor is it duplicated by, any other agency, board or commission. It is unique in the transportation field in that its function is entirely adjudicative.

The program's objective is to provide for the operation of an independent Tribunal to respond to requests from the transportation community for review of enforcement and licensing decisions taken by the Minister of Transport under the *Aeronautics Act*, the *Canada Shipping Act, 2001*, the *Marine Transportation Security Act*, the *Railway Safety Act*, the *Canada Transportation Act*, the *International Bridges and Tunnels Act* and the *Canada Marine Act*, and to conduct hearings into such requests.

The program's effectiveness can be measured by its ability to provide the transportation community with the opportunity to have ministerial decisions reviewed fairly, equitably and within a reasonable period of time. Tribunal hearings are readily accessible to the lay person without the attendant legal complexities and case backlogs which were visited upon the court system that prevailed prior to the creation of this Tribunal and its predecessor, the Civil Aviation Tribunal.

Organizational Information

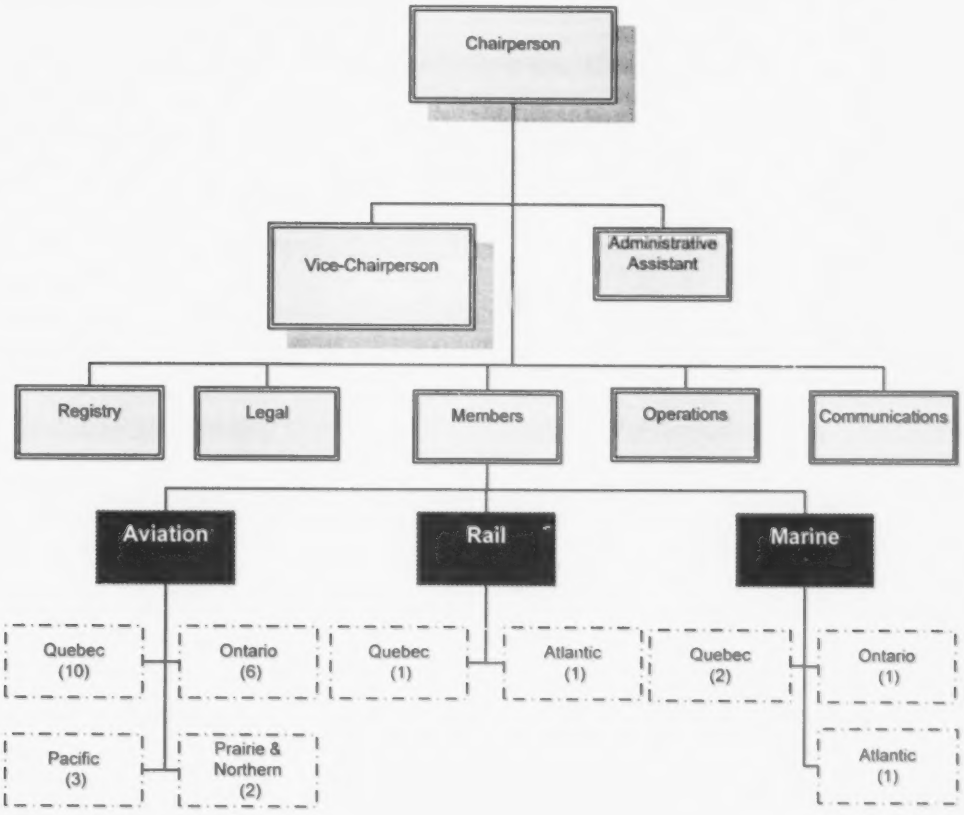
The Chairperson is the Chief Executive Officer of the Tribunal and has supervision over and direction of the work and staff of the Tribunal including:

- Apportionment of work among its Members;
- Assignment of Members to hear matters brought before the Tribunal;
- Conduct of the work of the Tribunal; and
- Management of its internal affairs.

The Tribunal reports to Parliament through the Minister of Transport.

The Chairperson, Vice-Chairperson and immediate staff account for 12 full-time equivalents. Twenty-seven part-time Members were in office during the 2008-2009 period. Members are drawn from across Canada and are appointed by Order in Council on the basis of their knowledge and expertise.

Figure 1: Organization Chart



- The lower half of the organization chart displays the distribution of part-time Members and their area of expertise by region. All Members report to the Chairperson.
- Twelve full-time equivalents (FTEs) are utilized by the continuing full-time employees, including the Chairperson and Vice-Chairperson. Five full-time equivalents are used by the twenty-seven part-time Members. During fiscal year 2008-2009, eight new part-time Members were appointed.

❖ Planning Summary

Financial Resources (Thousands of dollars)

2010-11	2011-12	2012-13
1 337.0	1 337.0	1 337.0

Human Resources (Full-time Equivalent – FTE)

2010-11	2011-12	2012-13
12	12	12

Strategic Outcome 1: The Canadian transportation community is provided with the opportunity to have enforcement and licensing decisions of the Minister of Transport reviewed by an independent body.	
Performance Indicators	**Targets**
% of disposition of review and appeal hearings within 90 days of request for hearing.	100% decisions rendered within 90 days.
% of hearing Members provided with training or refresher courses.	100% of hearing Members provided with training within 120 days of appointment.
% of registry staff provided with training.	100% of staff provided with training at fiscal year end.
% of decisions published on Web site.	100% of decisions are published on our Web site within 120 days of hearing.

Program Activity	Forecast Spending 2009–10	Planned Spending			Alignment to Government of Canada Outcomes
		2010–11	2011–12	2012–13	
Review and Appeal Hearings	1 337.0	1 337.0			A safe and secure Canada
Total Planned Spending		1 337.0	1 337.0	1 337.0	

❖ Contribution of Priorities to Strategic Outcome

Operational Priorities	Type	Links to Strategic Outcome(s)	Description
Hold hearings expeditiously and informally	Ongoing	To provide the Canadian transportation community with the opportunity to have administrative or enforcement actions under federal transportation Acts reviewed by an independent body.	By reviewing ministerial decisions fairly, equitably and within a reasonable period of time. Average lapsed time between the conclusion of a review hearing and issuance of a determination is 70 days and 85 days for an appeal. Our target is set at 90 days in accordance with our Performance Management Framework. The Tribunal encourages the use of pre-hearing conferences to assist parties to identify issues for determination and to disclose and exchange documents. This reduces the length of hearings and avoids last-minute adjournments necessitated by late disclosure.

Management Priorities	Type	Links to Strategic Outcome(s)	Description
Business Continuity Planning	Ongoing	To provide the Canadian transportation community with the opportunity to have administrative or enforcement actions under federal transportation Acts reviewed by an independent body.	Plans, measures and arrangements are in place to ensure the continuous delivery of critical services, permitting the organization to recover its data and assets in order to continue to provide the Canadian transportation community with the opportunity to have administrative or enforcement actions under federal transportation Acts reviewed by an independent body in the event of a business interruption.
Increase awareness of the Transportation Appeal Tribunal of Canada with respect to its mission, mandate, role and results achieved	Ongoing	To provide the Canadian transportation community with the opportunity to have administrative or enforcement actions under federal transportation Acts reviewed by an independent body.	Improved awareness and better information among the Transportation community and key stakeholders with respect to the Tribunal's mandate, services and decisions.

❖ Risk Analysis

As a micro-organization, the Tribunal's main risk is the increased pressure on its resources from an increased and unpredictable workload, as well as the need to meet the obligations of government-wide horizontal initiatives. The Tribunal's activities are driven by external demands that it can only react to rather than plan for.

Even though the demand for services has remained relatively stable, the Tribunal has had to manage ongoing increases in operating costs, such as the per diem for Members, hearing rooms, court reporters, travel charges, information technology upgrades and translation costs, while its funding budget has remained stable.

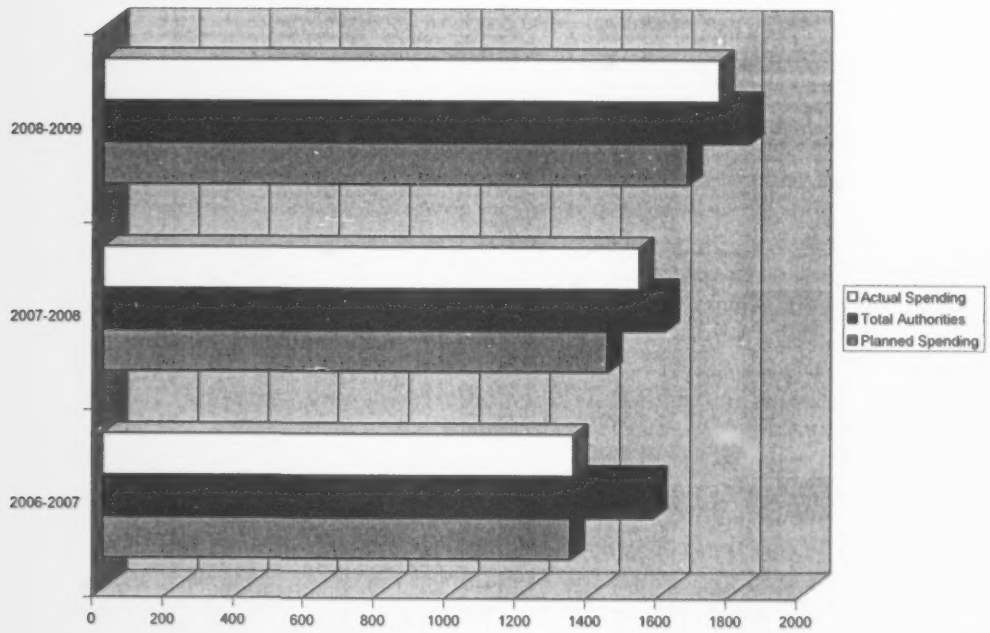
It must be noted, however, that the most important risk is the insufficient number of Members required to conduct hearings. In order to deliver on our program, the Tribunal needs to have Members with the right mix of skills and talents in all three modes of transportation.

Accordingly, the Tribunal has in place numerous strategies to mitigate these potential risks.

❖ Spending Trend

(Thousands of dollars)

	2006-2007	2007-2008	2008-2009
Planned Spending	1,329	1,433	1,660
Total Authorities	1,564	1,597	1,847
Actual Spending	1,337	1,523	1,750



For the 2006-2007 to the 2008-2009 periods, total authorities include all parliamentary appropriation: main estimates, supplementary estimates and carry-forward adjustments.

For 2008-2009, the total operating expenses increased by $227 000 as compared to the previous fiscal year. This increase can essentially be explained by the following:

- The Tribunal has experienced an increase in professional and special services fees to undertake the Web site-update project to disclose 3500 decisions on the Tribunal's Web site.

For 2007-2008, the total operating expenses increased by $186 000 as compared to fiscal year 2006-2007. This increase can essentially be explained by the following:

- The variances in resources spent are due to uncontrollable factors, such as fees for hearing rooms, travel, preparation and time spent on hearings, remuneration, interpreters, decision writing and costs for legal services, court reporting, transcripts and translations. The average costs fluctuate each fiscal year, as they are determined by the number of review determination and appeal hearings and the complexity of cases.

❖ Planned Spending

(Thousands of dollars)

	Forecast Spending 2009-2010	**Planned Spending 2010-2011**	**Planned Spending 2011-2012**	**Planned Spending 2012-2013**
Review and appeal hearings	1 337.0	1 337.0	1 337.0	1 337.0
Total main estimates	**1 337.0**	**1 337.0**	**1 337.0**	**1 337.0**
Adjustments:				
Rail Safety Initiatives	98.0	40.0	40.0	40.0
Carry forward	60.0	-	-	-
Additional funding from Transport Canada*	271.0	-	-	-
Policy framework for airports	-	100.0	100.0	100.0
Total adjustments	**429.0**	**140.0**	**140.0**	**140.0**
TOTAL PLANNED SPENDING	**1 766.0**	**1 477.0**	**1 477.0**	**1 477.0**

* Funding was requested from Transport Canada to hire additional employees and to provide training sessions for newly-appointed part-time Members.

❖ Voted and Statutory Items

(Thousands of dollars)

Vote # or Statutory Item (S)	Truncated Vote or Statutory Wording	2009–10 Main Estimates	2010–11 Main Estimates
1	Operating expenditures	1 219.0	1 219.0
(S)	Contributions to employee benefit plans	118.0	118.0
	TOTAL	**1 337.0**	**1 337.0**

Section II: Analysis of Program Activities by Strategic Outcome

❖ Strategic Outcome

The strategic outcome of the Tribunal is to provide the Canadian transportation community with the opportunity to have enforcement and licensing decisions of the Minister of transport reviewed by an independent body.

The Tribunal's only activity is the provision of an independent review process for aviation, rail and marine by providing document holders with the opportunity to proceed with a hearing. The Tribunal represents the only forum ensuring that document holders have access to an independent assessment governed by considerations of natural justice. Its role does not overlap with, nor is it duplicated by, any other agency, board or commission. It is unique in the transportation field, in that its function is entirely adjudicative.

Review and Appeal Hearings

The objective is to provide for the operation of an independent Tribunal to respond to requests from the transportation community for review of enforcement and licensing decisions taken by the Minister of Transport under the *Aeronautics Act*, the *Canada Transportation Act*, the *Railway Safety Act*, the *Marine Transportation Security Act*, the *Canada Marine Act*, the *Canada Shipping Act, 2001* and the *International Bridges and Tunnels Act*, and to conduct hearings into such appeals.

❖ Program Activity by Strategic Outcome

Program Activity 1: Review and Appeal Hearings					
Human Resources (FTEs) and Planned Spending (Thousands of dollars)					
2010–11		**2011–12**		**2012–13**	
FTEs	**Planned Spending**	**FTEs**	**Planned Spending**	**FTEs**	**Planned Spending**
12	1 337.0	12	1 337.0	12	1 337.0

Program Activity Expected Results	Performance Indicators	Targets
Access to an independent assessment governed by considerations of natural justice.	Hearings conducted in a timely manner.	100% of decisions rendered within 90 days.
Plans, measures and arrangements are in place to ensure the continuous delivery of critical services, which permits the organization to recover its data and assets	Business Continuity Plan updated. Tools developed to maintain business continuity plan readiness, such as contingency plan, emergency response plan and procedures for example. Working groups identified for the various planning committees (Contigency Planning and Emergency Response Planning)	BCP updated by March 2011. Tools developed and communicated amongst staff by March 2011. August 2010
Improved awareness and better information among the Transportation community and key stakeholders with respect to the Tribunal's mandate, services and decisions	Tribunal information accessible to the lay person in a timely manner. Participation in conferences and trade association meetings to enhance citizen engagement and public access to TATC's program. Promote TATC's program in public events such as fairs and exhibitions. Building and maintaining communication partnerships with the Transportation community to help meet diverse	Ongoing Ongoing Ongoing Ongoing

	needs. Liaison with other Federal Tribunals.	 Ongoing

❖ Canada's Economic Action Plan (CEAP)

Funding in the amount of $98,000 was received to support the implementation of railway safety initiatives and to enhance the Grade Crossing Improvement Program. This initiative is in support of the Canada's Economic Action Plan, under Action to Support Business and Communities.

❖ Lessons Learned

The Tribunal's only activity is the provision of an independent review process for aviation, rail and marine by providing document holders with the opportunity to proceed with a hearing.

Lessons learned can be defined as experiences acquired in the execution of programs and services that can provide value-added direction to future plans and efforts to achieve results. A plan must be in place to address and follow up on these actions and directions in future Report on Plans and Priorities.

The Tribunal's sole objective is to be effective, independent and to overcome the burden of delays and costs occasioned by the court system.

To promote communication between the parties with a view to settlement, the registry encourages early disclosure of documents to the applicant. In order to resolve outstanding issues that may delay the scheduling of the hearing, the registry will arrange a teleconference with a Tribunal member.

These experiences in aviation sector cases will prove valuable as marine and rail sector cases increase in complexity and will provide precedents in training sessions.

❖ Benefits for Canadians

The Tribunal is unique in the transportation field in that its sole function is adjudicative. It provides document holders and even passengers with the opportunity to have an independent hearing that is informal, expeditious and fair.

The cases before the Tribunal are regulatory in nature and concern matters of safety and security.

The Tribunal's performance indicators verify that these cases are conducted in a timely manner and that Tribunal information is accessible on its Web site.

The Tribunal process is able to quickly identify concerns in the transportation field of a technical or legislative nature leading to necessary amendments to legislation for the benefit of all Canadians through the enhancement and maintenance of transportation safety in Canada.

Section III: Supplementary Information

❖ Other Items of Interest

Contacts for Further Information

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Françoise Bodart – Editor/Writer
Sylvie Fournier – Administrative Assistant
Louise Lacroix – Finance, Contract and Administration Officer
Michel Meloche – Executive Services Manager

Statutes and Regulations Currently in Force

Transportation Appeal Tribunal of Canada Act	S.C. 2001, c. 29
Transportation Appeal Tribunal of Canada Rules	SOR/93-346
Aeronautics Act (and subordinate legislation)	R.S.C. 1985, c. A-2
Canadian Aviation Regulations	SOR/96-433
Canada Transportation Act	S.C. 1996, c. 10
Canadian Transportation Agency Designated Provisions Regulations	SOR/99-244
Railway Safety Act	R.S.C. 1985, c. 32 (4th Supp.)
International Bridges and Tunnels Act	S.C. 2007, c. 1
Marine Transportation Security Act	S.C. 1994, c. 20
Marine Transportation Security Regulations	SOR/2004-144
Canada Shipping Act, 2001	S.C. 2001, c. 26
Administrative Monetary Penalties Regulations	SOR/2008-97

Statutory Annual Report and Other Departmental Reports

Departmental Performance Report
Report on Plans and Priorities
Annual Report
Guide for Applicants